

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
CENTRAL DIVISION

FILED
CLERK OF COURT
FEB 22 2 04
CASE NO. **05-40033**

ROBERT SMALE AND LESLIE SMALE,

PLAINTIFFS,

V.

TITLE 11 FUNDING, LLC

DEFENDANT.

RECEIPT # 404519
AMOUNT \$ 250.-
SUMMONS ISSUED ✓
LOCAL RULE 4.1 ✓
WAIVER FORM ✓
MCF ISSUED ✓
BY DPTY. CLK. RH
DATE 2/22/05

COMPLAINT FOR DECLARATORY JUDGMENT

OVERVIEW

1. This is an action seeking a declaration of rights of the parties. The Plaintiffs are husband and wife who intend to file for Chapter 7 Bankruptcy relief. The Plaintiffs seek to protect personal property assets, namely two (2) unencumbered motor vehicles with a total value over \$30,000.00 from being liquidated in the upcoming Chapter 7 proceeding. The plaintiffs seek authority to make pre-petition financing arrangements so that the motor vehicles will not be subject to liquidation in a Chapter 7 proceeding.

PARTIES

2. The Plaintiffs are Robert A. Smale and Leslie F. Smale, husband and wife. The Plaintiffs both reside at 46 Beech Street, Clinton, Massachusetts. They are both age 54.
3. The Defendant is Title 11 Funding, LLC a duly organized Rhode Island Limited Liability Company.

JURISDICTION

4. This Honorable Court, pursuant to *28 U.S.C.A. §2201(a)* has original jurisdiction of this matter, the declaration of the rights of parties under *Title 11- the Bankruptcy Code*. Procedurally, the *Rules of Civil Procedure* governs this action. *Rules of Civil Procedure – Rule 57*.

PREVIOUS PROCEEDING

5. The Smales commenced a declaratory judgment action in the Western District of the U.S. Bankruptcy Court – District of Massachusetts – Case No. 04-4487. The action raised facts and issues identical to those raised in this action. The Bankruptcy Court *sua sponte* dismissed the action stating that the Bankruptcy Court had no authority to entertain a declaratory action without a pending bankruptcy proceeding with the plaintiffs as debtors.

FACTS

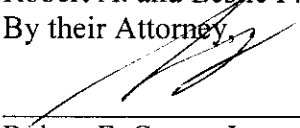
6. The Smales are a couple who own a home and have a family. They are of a middle class station.
7. The Smales are overwhelmed with consumer debt. Their unsecured debt is approximately \$124,275.00.
8. The sudden, recent death of the Smales' fourteen (14) year old daughter in a motor vehicle accident in May, 2004 has so affected the Smales that their ability to engage in productive income-generating work has been compromised.
9. The Smales are in need of Chapter 7 relief. The Smales intend to file for Chapter 7 relief once the issue presented herein is resolved.
10. The Smales own two vehicles unencumbered by motor vehicle loans or other liens. The vehicles are a 2000 Ford Ranger and a 2001 Toyota Sienna, and have a fair market value of five thousand (\$5,000.00) dollars and seventeen thousand (\$17,000.00) dollars, respectively.
11. The Smales will elect the state exemptions to exempt their property. This election is based on the Smales' desire to protect the family residence which has equity in excess of that exempted under *U.S.C.A. § 522(d)(1)*.
12. If the Smales were to file for relief in their present financial situation, the two motor vehicles are in imminent danger of liquidation by the interim Chapter 7 Trustee with only a \$700.00 exemption available under *M.G.L .c. 235 §34(16)*.

13. To protect the motor vehicles from liquidation, the Smales are desirous of borrowing on all available equity, as much as the lender will allow, in their motor vehicles.
14. The Smales will, in turn, use all the borrowed funds to make an immediate, direct principal payment on the marital home mortgage.
15. The Smales will then defer their Chapter 7 filing until the preference period for the payment to the mortgagee of 90 days has lapsed.
16. By these pre-petition actions, the Smales are, in essence, converting motor vehicle equity into residential equity which will be exempt under the statute exemption *M.G.L. Chapter 188 §1*.
17. The Smales have approached Title 11 Funding, LLC to determine Title 11 Funding, LLC's willingness to loan monies using the unencumbered motor vehicle as collateral. Title 11 Funding, LLC is a lender that provides loans to debtors in bankruptcy proceedings. Title 11 Funding, LLC has indicated that such a loan is of interest to Title 11 Funding, LLC.
18. Title 11 Funding, LLC has indicated that it will not approve the proposed loan without a judicial determination that such a transaction would not expose Title 11 Funding, LLC to liability for participating in a transaction that may be perceived to violate the bankruptcy law of preference or transfer.
19. The Smales are of the opinion that the proposed course of action violates no statute. A determination in advance of the Chapter 7 filing is necessary because without an advance determination the Smales will be exposing themselves to potential liability for violation of the *Bankruptcy Code*.
20. In the event the principal payment was deemed a voidable preference after the Chapter 7 filing, the Smales would be unable to exempt the recovered property because the transfer would be voluntary. This voluntary transfer would exclude the property from being exempted under *11 U.S.C.A. §522(g)(1)(A)*.
21. This Honorable Court, pursuant to *28 U.S.C.A. §2201(a)* may declare the rights and other legal relations of parties as an actual controversy exists. The prospective lender, Title 11 Funding, LLC, refuses to consider a loan to the Smales because Title 11 Funding, LLC believes that the transaction may violate the Bankruptcy Code. The purpose of Declaratory Relief is to afford relief from uncertainty and insecurity with respect to rights, duties, statutes, and legal relations.

Wherefore, the Plaintiffs, Robert A. Smale and Leslie F. Smale, request this Honorable Court to resolve this controversy by entering a Declaratory Judgment on the issue herein presented or refer this action to the Bankruptcy Court for resolution.

Respectfully Submitted,
Robert A. and Leslie F. Smale,
By their Attorney,

Dated: February 17, 2005



Robert F. Casey, Jr.
6 Lancaster County Road
Harvard, MA 01451
(978) 772-2223
BBO# 077700

JS 44 (Rev. 3/99)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States, September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Robert Smale and Leslie Smale

Worcester

(b) County of Residence of First Listed Plaintiff
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS

Title 11 Funding, LLC

Not applicable

County of Residence of First Listed
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Robert F. Casey, Jr., P.C.
6 Lancaster County Road
Harvard, MA 01451
(978) 772-2223

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for (For Diversity Cases Only) and One Box for Defendant)

- Citizen of This State ☐ 1 ☐ 1 PTF DEF
- Incorporated or Principal Place of Business In This State ☐ 4 ☐ 4
- Citizen of Another State ☐ 2 ☐ 2
- Incorporated and Principal of Business In Another State ☐ 5 ☐ 5
- Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 Foreign Nation ☐ 6 ☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input checked="" type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	

V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

28 USCA §2201(a), The plaintiffs seek a declaration of rights in bankruptcy proceeding in advance of filing Ch. 7 in order to avoid

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION DEMAND UNDER F.R.C.P. 23

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY (See instructions):

JUDGE

DOCKET NUMBER

DATE

2-17-05

SIGNATURE OF ATTORNEY OR RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

*irreparable harm.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) Robert Smale v. Title 11 Funding, LLC
2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).
- ☐ I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.
- ☒ II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950. *Also complete AO 120 or AO 121 for patent, trademark or copyright cases
- ☐ III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- ☐ IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- ☐ V. 150, 152, 153.
3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.
- Not applicable.
4. Has a prior action between the same parties and based on the same claim ever been filed in this court?
- YES ☐ NO ☒
5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)
- YES ☐ NO ☒
- If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?
- YES ☐ NO ☐
6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?
- YES ☐ NO ☒
7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).
- YES ☒ NO ☐
- A. If yes, in which division do all of the non-governmental parties reside?
- Eastern Division ☐ Central Division ☒ Western Division ☐
- B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?
- Eastern Division ☐ Central Division ☐ Western Division ☐
8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)
- YES ☐ NO ☐
- (PLEASE TYPE OR PRINT)
- ATTORNEY'S NAME Robert F. Casey, Jr.
- ADDRESS 6 Lancaster County Road, Harvard, MA 01451
- TELEPHONE NO. (978) 772-2223